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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/446,415	07/19/2000	LESA J. BEAMER	11034US02/0	2291

7590 04/07/2004

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EXAMINER

MARSCHER, ARDIN H

ART UNIT

PAPER NUMBER

1631

DATE MAILED: 04/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT

PAPER

4204

DATE MAILED:

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Commissioner for Patents

The communication, filed on 1/5/04, is non-responsive to the prior Office action, mailed 7/3/03, because of two reasons. Firstly, the shifting of claimed subject matter from method of modeling usage to crystal compositions and methods of making is impermissible as being drawn to a non-elected invention by original presentation as also summarized in the next paragraph. Secondly, applicants failed to respond to the title objection as set forth in said prior Office action. Since the response appears to be bona fide, but through an apparent oversight or inadvertence failed to provide a complete response, applicant is required to complete the response within a time limit of one month from the date of this letter or as extended as follows. **AN EXTENSION OF THIS TIME LIMIT MAY BE GRANTED UNDER EITHER 37 C.F.R. ' 1.136(a) OR (b) UP TO A MAXIMUM OF SIX MONTHS.**

Newly submitted claims 26-37 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

The inventions of newly submitted claims 26-37 and previously submitted claims 1-25 are related as product/methods of making them and distinct processes of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the crystal composition products may alternatively be utilized in crystallization methods of highly purifying BPI protein as is known in the art as a purification methodology for a protein, as well as in the distinct methods of use as set forth in the previous restriction requirement, mailed 12/12/2000.

Additionally, methods of making of the crystal compositions are distinct from modeling usage methods as being methods with different goals and results and that the product made may be utilized in distinct methods as noted above.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 26-37 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Papers related to this application may be submitted to Technical Center 1600 by facsimile transmission. Papers should be faxed to Technical Center 1600 via the Central PTO Fax Center. The faxing of such papers must conform with the notices published in the Official Gazette, 1096 OG 30 (November 15, 1988), 1156 OG 61 (November 16, 1993), and 1157 OG 94 (December 28, 1993)(See 37 CFR § 1.6(d)). The Central PTO Fax Center number is (703) 872-9306.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ardin Marschel, Ph.D., whose telephone number is (571) 272-0718. The examiner can normally be reached on Monday-Friday from 8 A.M. to 4 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward, Ph.D., can be reached on (571) 272-0722.

Any inquiry of a general nature or relating to the status of this application should be directed to Legal Instrument Examiner, Tina Plunkett, whose telephone number is (571) 272-0549.

April 2, 2004
09/446,415


ARDIN H. MARSCHEL 4/2/04
PRIMARY EXAMINER